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15 *Attorneys for Plaintiffs and Class Members*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF FRESNO**

18 KAREN MICHELI, et al.,
19 Plaintiffs,
20 v.
21 THE CITY OF FRESNO, et al.,
22 Defendants.

23 JACKIE FLANNERY, et al.,
24 Plaintiffs,
25 v.
26 THE CITY OF FRESNO, et al.
27 Defendants.

E-FILED
11/3/2021 1:43 PM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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Lead Case No. 16CECG02937
Consolidated with Case No. 17CECG01724

CLASS ACTION

NOTICE OF ENTRY OF ORDERS

*Assigned for All Purposes to:
Hon. Rosemary T. McGuire, Dept. 502*

Lead Action Filed: 9/9/2016
Consolidated Action Filed: 5/17/2017
Trial Date: 7/25/2022

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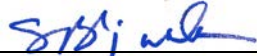
TO ALL PARTIES AND THEIR COUNSEL OF RECORD HEREIN:

PLEASE TAKE NOTICE of the Court’s entry of orders granting Plaintiffs’ Motion to Approve Class Notice Plan in the above-captioned, consolidated class actions. A true and correct copy of the Court’s October 29, 2021 Law and Motion Minute Order and Ruling on Plaintiffs’ Motion to Approve Class Notice Plan is attached hereto as Exhibit 1. A true and correct copy of the Court’s November 3, 2021 Second Amended Order Granting Plaintiffs’ Motion to Approve Class Notice Plan is attached hereto as Exhibit 2.

DATED: November 3, 2021

Respectfully submitted,

BOUCHER LLP

By: 
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Shehnaz M. Bhujwala

COTCHETT, PITRE & MCCARTHY LLP
Frank M. Pitre
Julie L. Fieber

CHANDLER LAW
Stuart Chandler

Attorneys for Plaintiffs and Class Members

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited	Entered by:
TITLE OF CASE: Karen Micheli vs. The City of Fresno / LEAD CASE / CLASS ACTION	
LAW AND MOTION MINUTE ORDER	Case Number: 16CECG02937

Hearing Date: **October 29, 2021** From Chambers: **Ruling on Motion Re: Class Notification**
Department: **502** Judge/Temp. Judge: **McGuire, Rosemary**
Court Clerk: **Garcia, Sam** Reporter/Tape: **Not Reported**

Appearing Parties:	
Plaintiff:	Defendant:
Counsel: No Appearances	Counsel: No Appearances

Off Calendar

Continued to Set for ___ at ___ Dept. ___ for ___

Submitted on points and authorities with/without argument. Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted in part and denied in part. Motion is denied with/without prejudice.

The matter previously taken under advisement on 10-27-2021 is now taken out of advisement. After further briefing and several hearings on the matter; and after review and consideration of the arguments presented by counsel the issues, the court issues its ruling approving the class notice plan submitted by plaintiffs with modifications.

Demurrer overruled sustained with ___ days to answer amend

Tentative ruling becomes the order of the court. No further order is necessary.

Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

Service by the clerk will constitute notice of the order.

See attached copy of the Tentative Ruling.

Judgment debtor ___ sworn and examined.

Judgment debtor ___ failed to appear.

Bench warrant issued in the amount of \$ ___

JUDGMENT:

Money damages Default Other ___ entered in the amount of:

Principal \$___ Interest \$___ Costs \$___ Attorney fees \$___ Total \$___

Claim of exemption granted denied. Court orders withholdings modified to \$___ per ___

FURTHER, COURT ORDERS:

Monies held by levying officer to be released to judgment creditor. returned to judgment debtor.

\$___ to be released to judgment creditor and balance returned to judgment debtor.

Levying Officer, County of ___, notified. Writ to issue

Notice to be filed within 15 days. Restitution of Premises

Other:

Ruling

Re: **Micheli v. City of Fresno**
Superior Court Case No. 16CECG02937

Hearing Dates: October 13, 26 & 27, 2021 (Dept. 502)

Motion: By Plaintiff to Approve Class Notice Plan

Ruling:

To grant. The court approves the revised long and short form notices submitted by plaintiffs' counsel on October 29, 2021 with the insertion of the end date of August 2, 2021, the date of the order certifying the class.

The court directs plaintiffs' counsel to submit a revised order attaching the revised long and short form notices and the Request for Exclusion form. Paragraph 5 of the revised order should reflect that the notice packet shall issue within 60 days of entry of the order or by December 31, 2021. The following language shall be deleted from Paragraph 6 (page 3:10-12) "(3) all other documents and data requested for production by Plaintiffs in their sixth set of Request for Production of Documents to the City of Fresno (Bhujwala Decl., Exhibit 4)," as this issue is pending.

Explanation:

Class Notice Plan

Class notice is governed by California Rules of Court, rule 3.766(f), and "[t]he trial court ' ' 'has virtually complete discretion as to the manner of giving notice to class members'"" (Cellphone Termination Fee Cases (2010) 186 Cal.App.4th 1380, 1391.)

In addition, "[s]ome of the facts relevant to the development of a constitutionally adequate notice plan normally will not be immediately obvious from the class definition itself. Regardless of the size of the class or other relevant circumstances, a demand that the representative plaintiff show how individualized notice could be provided to class members in order to establish an ascertainable class could preempt a more careful, nuanced, and potentially collaborative assessment, and in doing so impose upon the plaintiff an absolute requirement that closer review of all of the relevant facts could demonstrate to be excessive in light of the interests involved." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, at pp. 984-986 (Noel) [noting that arguments and evidence relating to the provision of notice could impact an aspect apart from ascertainability (e.g. manageability), but such issues, "where they exist, are appropriately addressed outside of and separately from the ascertainability requirement."].)

Defendant argues there is no agreement of what objectively constitutes "discolored, rusty water" and, if limited to the term "rusty," the sole database has only one or two entries. Thus concludes defendant, there is no objective standard where a potential member could identify themselves as part of the class. Nevertheless, although

defendant focuses on the subjectivity of terms such as "rusty" and "discolor[ation]" and concludes the class is unascertainable or, at minimum, the class must be redefined or modified, the California Supreme Court instructs that an ascertainable class is one that is defined in "terms of objective characteristics and common transactional facts." (*Noel*, *supra*, 7 Cal.5th at p. 961.) Accordingly, the focus is not necessarily on the beliefs or actions of proposed class members since "plaintiffs can generally avoid the subjectivity problem by defining the class in terms of conduct (an objective fact) rather than a state of mind." (*Mullins v. Direct Digital, LLC* (7th Cir. 2015) 795 F.3d 654, 660.)

As stated in the court's order of certification, "[p]laintiffs have satisfied the commonality requirement, as they are asserting that all proposed class members suffered harm to their galvanized plumbing systems due to the City's use of surface water after many years of using only groundwater." Consequently, as already determined by this court, the characteristics and common transactional facts (i.e., the harm suffered to the proposed plaintiffs' plumbing systems incurred from defendants' change of groundwater to surface water), can be reasonably inferred through complaints of rusty, discolored water. To the extent the change from ground water to surface water can be demonstrated by the color or texture of the water, the proposed notice is reasonably addressed to those who have previously complained of discolored and/or rusty water.

Defendant relies on *Fireside Bank v. Superior Court* (2007) 40 Cal.4th 1069 (*Fireside Bank*) which involved motions for class certification occurring after a party had already received a ruling on the merits of the case, a situation deemed "one-way intervention." (*Id.* at p. 1078.) The remedy, according to the California Supreme Court, was "[i]f a party seeks and obtains a merits ruling before moving for class certification, it must demonstrate changed circumstances to justify its belated motion for class certification." (*Id.* at p. 1088.) *Fireside Bank*, however, is distinguishable from the instant case because here, there has been no merits ruling.

In addition, although defendant contends the short form notice would be mailed to 120,000 people, even if that number is accurate, the short-form itself informs the recipient that "If you own or owned residential, single-family real property within the City of Fresno's Discolored Water Investigation Area anytime between January 1, 2016 and August 2, 2021, a class action lawsuit may affect your rights." Therefore, the notice limits itself to only those who experienced common characteristics.

Finally, although defense attorney Jeffery Caufield declares that only a "handful" of instances in the "database" of call examined involved "rusty" water (Caufield Decl. ¶ 2), defendants discovery responses indicate the existence of a variety of reporting mechanisms, including noting the existence of third party Superior System, FresGO/PublicStuff online inquiries, One Call Center, Heat database. (See Bhujwala, Decl. Ex. 4 "Response to Special Interrogatory No. 13".) Consequently, Mr. Caufield's declaration lacks the foundation required to establish his review of all of these records. Furthermore, to the extent these records may contain entries indicating the reporting of "rusty, discolored water" they must be produced.

Ruling
Issued By: RTM on 10/29/21
(Judge's initials) (Date)

<p style="text-align: center;">SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department, Central Division 1130 "O" Street Fresno, California 93724-0002 (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE: Karen Micheli vs. The City of Fresno / LEAD CASE / CLASS ACTION</p>	
<p style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</p>	<p>CASE NUMBER: 16CECG02937</p>

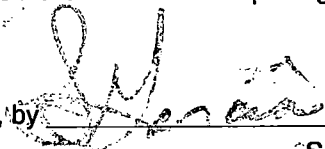
I certify that I am not a party to this cause and that a true copy of the:

10-29-2021 MINUTE ORDER/RULING

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 10/29/2021

Clerk, by  _____, Deputy
S. Garcia

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Clerk's Certificate of Mailing Additional Address Page Attached

EXHIBIT 2

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FILED
 NOV - 3 2021

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 11/1/2021 3:31 PM DEPT. 502
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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **COUNTY OF FRESNO, CENTRAL DIVISION**

18 KAREN MICHELI, et al.,
 19 Plaintiffs,
 20 v.
 21 THE CITY OF FRESNO, et al.,
 22 Defendants.
 23 JACKIE FLANNERY, et al.,
 24 Plaintiffs,
 25 v.
 26 THE CITY OF FRESNO, et al.
 27 Defendants.
 28

Case No. 16CECG02937
 Consolidated with Case No. 17CECG01724
CLASS ACTION
**SECOND AMENDED [PROPOSED]
 ORDER GRANTING PLAINTIFFS'
 MOTION TO APPROVE CLASS NOTICE
 PLAN**
*Assigned for All Purposes to:
 Hon. Rosemary T. McGuire, Dept. 502*
 Lead Action Filed: 9/9/2016
 Consolidated Action Filed: 5/17/2017
 Trial Date: 7/25/2022

SECOND AMENDED PROPOSED ORDER

The Court, having considered Plaintiffs’ Motion to Approve Class Notice Plan with Plaintiffs’ Rule 3.766(b) Statement regarding class notice and the appointment of a notice administrator, all briefing submitted by the Parties in support or opposition to Plaintiffs’ Motion, and oral argument by the Parties at the hearings held on October 13, 2021, October 26, 2021, and October 27, 2021, and having issued a ruling granting Plaintiffs’ Motion and approving the class notice plan submitted by Plaintiffs with modifications on October 29, 2021, hereby makes the following findings and enters the following orders pursuant to California Rules of Court, Rule 3.766(c):

1. Notice to Class members of the pendency of the above-captioned, consolidated class actions is necessary.
2. Class members may exclude themselves from the above-captioned, consolidated class actions.
3. The Court approves, as to form and content, the long-form Class Notice, the Request for Exclusion form, and the short-form Class Notice, attached as Exhibits 1, 2, and 3 hereto. The content of these documents shall be substantially similar to the documents attached as Exhibits 1, 2, and 3.
4. Notice to Class members and the opportunity for Class members to request exclusion shall be given in the time and manner proposed by Plaintiffs and approved by this Court. Plaintiffs’ class notice plan provides for the *best practicable* notice, reasonably calculated under the circumstances to apprise interested parties of the pendency of the class action and of their rights. *See Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 982-983. It provides for “meaningful notice, in a form that ‘should have a reasonable chance of reaching a substantial percentage of class members.’” *Id.* at 983 (citations omitted.) The notice plan constitutes valid, due and sufficient notice to Class Members under California Rules of Court, Rule 3.766 and other applicable laws.
5. The long-form Class Notice and Request for Exclusion form (“Notice Packet”), and short-form Class Notice, shall issue within 60 days of entry of this Order, or by December 31,

1 2021. Class Members will be provided with at least 45 days from the issuance of notice to
2 complete and submit their request for exclusion forms to the Notice Administrator.

3 6. Defendant City of Fresno and its counsel shall cooperate in the Court-approved
4 class notice plan. Defendant is ordered to disseminate the short-form Class Notice, substantially
5 in the form of Exhibit 3 hereto, by the means proposed by Plaintiffs and approved by this Court,
6 specifically, (a) by short-form Class Notice inserts in billing statements mailed or emailed by
7 Defendant to Defendant's water customers at residential addresses located within ZIP Codes
8 93710, 93720, and 93730; and (b) by Defendant's posting of the short-form notice content on
9 Defendant's Department of Public Utilities website, under Announcements
10 (<https://www.fresno.gov/publicutilities/announcements/>) for a period of at least 60 days.
11 Additionally, Defendant shall provide Plaintiffs with up to date, unredacted copies of the
12 following items within 10 days of entry of this Order: (1) Defendant's database of water
13 customers within the City of Fresno's Discolored Water investigation area (from E. Copper
14 Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), who reported
15 discolored water to the City of Fresno anytime between January 1, 2016 and August 2, 2021, in
16 native format; and (2) Defendant's discolored water data set (previously produced as
17 COF0260063_CONFIDENTIAL), in native format.

18 7. The Notice Packet shall be mailed by the Notice Administrator to all residential
19 addresses identified on Defendant's database of water customers within the City of Fresno's
20 Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State
21 Route 41 to N. Willow Avenue) who reported discolored water to the City of Fresno anytime
22 between January 1, 2016 and August 2, 2021.

23 8. The Court appoints CPT Group, Inc. as the third-party class action notice
24 administrator ("Notice Administrator"). The Notice Administrator shall carry out all necessary
25 responsibilities, including formatting of the various forms of Class Notices and Request for
26 Exclusion form, receipt of the potential class member data, administration of the direct mail
27 distribution of the approved notice packet, receipt of requests for exclusions by mail and reporting
28 thereon, and maintenance of a class notice website with the content proposed by Plaintiffs.

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

If you own or owned residential, single-family real property within the City of Fresno's Discolored Water Investigation Area anytime between January 1, 2016 and August 2, 2021, a class action lawsuit may affect your rights.

PLEASE READ THIS NOTICE CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS.

Para una notificación en español, visite www.xxx.com

A Court approved this Notice to inform you of a consolidated class action lawsuit that is being litigated on behalf of all owners of residential, single-family real property located within the City of Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), who, anytime between January 1, 2016 and August 2, 2021: (1) had galvanized iron plumbing; (2) received water service from the City of Fresno; (3) reported discolored, "rusty" water at that address to the City of Fresno; and (4) have not released their claims against the City.

Your rights may be affected by the legal proceedings in this class action lawsuit. At this time, there is no resolution of the lawsuit that would entitle you to money or other benefits.

I. WHAT IS THIS LAWSUIT ABOUT?

The Fresno County Superior Court approved this Notice to inform potential Class Members of a consolidated class action lawsuit. The lead class action is *Micheli, et al. v. City of Fresno*, Fresno County Superior Court Case Number 16CECG02937. The Plaintiffs in the lawsuit allege that the City of Fresno's water prematurely corroded and destroyed the galvanized iron plumbing in Northeast Fresno area residents' homes, resulting in their receipt of discolored, "rusty" water. Plaintiffs allege the City of Fresno is responsible for certain economic losses suffered under civil claims of negligence, nuisance, breach of contracts, and breach of implied warranties, including the cost of replumbing Plaintiffs' and Class Member homes, reimbursement of the cost of discolored, corrosive water, pre/post judgment interest, and attorney's fees and litigation costs. The Plaintiffs in the class action do not allege personal injury claims or seek damages for personal injury claims, nor do they seek diminution in value damages.

The City denies any liability or wrongdoing of any kind associated with any of the claims alleged by Plaintiffs in the class action lawsuit, and maintains that its practices were lawful and permissible under California and Federal laws. The City maintains that the presence of iron in water is an aesthetic issue only under the Safe Drinking Water Act; that it has not violated any numeric standards under the Safe Drinking Water Act; and that the State of California and US EPA have concluded that the City's corrosion control was optimized during all times at issue.

The class action has been heavily prosecuted and defended by the parties over the past several years. No decision has been made regarding the merits of Plaintiffs' claims, the City's liability or wrongdoing, or whether the Plaintiffs and Class Members are entitled to any money at this time. Those issues will be decided at a later time or at trial, which has been scheduled to begin July 25, 2022.

By court orders dated July 30, 2021 and August 2, 2021, the Honorable Rosemary T. McGuire of the Fresno County Superior Court granted the Plaintiffs' request to proceed as a class action and represent the following class:

All owners of residential, single family real property located within the City of Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), who, anytime between January 1, 2016 and present: (1) had galvanized iron plumbing; (2) received water service from the City of Fresno; (3) reported discolored, "rusty" water at that address to the City of Fresno; and (4) have not released their claims against the City (the "Class" or "Class Members").

The Court also certified two "subclasses", one for Class Members who have "obtained water quality test results from the City of Fresno indicating iron at any tested fixture above 0.3 mg/L" ("Subclass 1"), and one for Class Members who "have not obtained water quality test results from the City of Fresno" ("Subclass 2").

Excluded from the Class are Defendant City of Fresno or any entity or division therein, and its legal representatives, officials, and employees; also excluded is any judicial officer presiding over this action, the judge's staff members, and any member of the judge's immediate family.

Questions? Visit www.xxxxx.com

The Court's decision means that the Court has decided that the Plaintiffs, and the law firms representing Plaintiffs, will represent the Class Members' interests for the claims at issue in the lawsuit. The five law firms appointed to serve as Class Counsel are: Boucher LLP, Chandler Law, Cotchett, Pitre & McCarthy LLP, Kabateck LLP, and Law Offices of Michael E. Gatto. If Class Counsel gets money or benefits for the Class, they may ask the Court for fees and expenses. You will not have to pay these fees and expenses. If the Court grants Class Counsel's request, the fees and expenses would be either deducted from any money obtained for the Classes or paid separately by the City of Fresno. The Court's decision is a procedural decision that means that the lawsuit may proceed as a class action, on behalf of Class Members.

II. AM I A CLASS MEMBER?

You may be a Class Member if you own or owned residential, single-family real property within the City of Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), and, anytime between January 1, 2016 and August 2, 2021: (1) had galvanized iron plumbing; (2) received water service from the City of Fresno; (3) reported discolored, "rusty" water at that address to the City of Fresno; and (4) have not released your claims against the City. To obtain more information about the class action and whether you are a Class Member, please visit www._____.com to review the complaint and answer, and other key documents and information.

III. WHY DID I GET THIS NOTICE?

On [DATE], the Court ordered that you receive this Notice. You have received this Notice based on the business records of the City, which indicate that you may be a member of the Class because you reported discolored water to the City of Fresno at a residential address within the City of Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), sometime between January 1, 2016 and August 2, 2021.

Additionally, to the extent you are a Class Member and obtained water quality test results from the City of Fresno indicating iron at any tested fixture above 0.3 mg/L, you may also be a member of Subclass 1. If you are a Class Member and you have not obtained water quality test results from the City of Fresno, you may be a member of Subclass 2.

Your legal rights may be affected whether you act or do not act. Your options are summarized in this Notice.

IV. WHAT ARE MY LEGAL RIGHTS AND OPTIONS?

Please review the Class Member description provided in Section I carefully. If you are a member of the Class and/or one of the Subclasses, you must decide whether to stay in the Class (and be bound by whatever results) or exclude yourself (and keep your right to sue the City of Fresno in your own separate lawsuit).

A. OPTION ONE: DO NOTHING AND PARTICIPATE IN THE LAWSUIT.

If you wish to remain a Class Member, you do not need to do anything at this time to participate in the lawsuit.

If you do nothing, you will give up your right to sue the City of Fresno separately about the same legal claims at issue in the lawsuit. You will be represented by the law firms court-appointed to serve as Class Counsel. At your option, if you remain a Class Member, you may also enter an appearance through your own lawyer. If the Plaintiffs prevail in the claims at issue in the lawsuit, you may be eligible to receive a portion of any monetary settlement or award issued to the Class Members. You will not be compensated for any claims that you may have already settled or that a Court decided in a prior lawsuit. **If you choose to do nothing at this time and remain a Class Member, you will be bound by the Court's decisions and by the final judgment, whether it is favorable or not.** You may be asked to provide certain proof of class membership at a later time.

B. OPTION TWO: EXCLUDE YOURSELF ("OPT OUT") FROM THE LAWSUIT.

If you do not wish to participate as a Class Member in the lawsuit or to be bound by the decisions or judgments in the lawsuit for any reason, including because you may wish to preserve your right to pursue any individual claims you may have against the City separately, you must exclude yourself from the lawsuit ("opt out").

To opt out of the lawsuit, you must mail a completed, signed, and dated Request for Exclusion form to the Class Administrator ("Class Administrator") at the address provided below **postmarked by [date]**. Your Request for Exclusion form must include your full, legal name, your address of the single-family residence for which you reported discolored, "rusty" water to the City anytime between January 1, 2016 and August 2, 2021 ("Class Property"), your telephone number and email address (if any), your current residential address, if different from the Class Property address, and your City of Fresno water account number for the Class Property. **You must complete, sign and date your Request for Exclusion form, and mail it to the Class Administrator postmarked by [date], for it to be valid.** The Class Administrator will provide notice to the Court and the parties of your decision to exclude yourself from the lawsuit.

The Request for Exclusion form must be sent to:

Micheli, et al. v. City of Fresno
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

Anyone who submits a timely, completed, signed, and dated Request for Exclusion form to the Class Administrator will, upon the Class Administrator's receipt of it, not be a Class Member, and will not be entitled to receive any portion of any settlement, award, or any other relief provided to Class Members if the Plaintiffs prevail in the lawsuit. However, if you choose to opt out of the lawsuit, you will preserve your right to pursue (or not pursue) any potential or actual civil claims you may have against the City of Fresno separately and will not be bound by any decisions made in the lawsuit or by the final judgment in the lawsuit. Also, if you choose to opt out of the lawsuit, you will not be represented by the Plaintiffs or the law firms appointed to serve as Class Counsel.

V. THE TRIAL

The Court has not yet held a trial to decide who is right in this case. Trial is scheduled to begin July 25, 2022, and the date will also be posted on the website, www.xxxxx.com. You do not need to attend the trial. Class Counsel will present the case for the Plaintiffs, and lawyers for City of Fresno will present on their behalf. You or your own lawyer is welcome to attend at your own expense.

VI. WHAT SHOULD I DO IF I NEED ADDITIONAL INFORMATION?

This Notice is intended only to provide a summary of the lawsuit.

For more detailed information, you may examine the documents filed in the lawsuit at any time during regular business hours at the Office of the Clerk of the Fresno County Superior Court. You may also view the court filings online via the Court's website (<https://publicportal.fresno.courts.ca.gov/fresnoportal/>) and by entering case number 16CECG02937.

Additionally, the Class Administrator has set up a website (www.xxxxx.com), which will enable you to review a copy of this Notice, a copy of the Plaintiffs' current Fifth Amended Class Action Complaint and the City's Answer, copies of the Court's July 30, 2021 and August 2, 2021 Orders granting class certification, and a copy of the Request for Exclusion Form, among other case information.

You may seek the advice and guidance of your own private attorney, at your own expense, if you desire.

If you should have any questions, you may also contact the Class Counsel listed below.

<p>Raymond P. Boucher, Esq. Shehnaz M. Bhujwala, Esq. BOUCHER, LLP 21600 Oxnard Street, Suite 600 Woodland Hills, CA 91367 Telephone: (818) 340-5400 Email: ray@boucher.la bhujwala@boucher.la</p>	<p>Frank R. Pitre, Esq. Julie L. Fieber, Esq. COTCHETT, PITRE & MCCARTHY LLP 840 Malcolm Road, Suite 200 Burlingame, CA 94010 Telephone: (650) 697-6000 Email: fpitre@cpmlegal.com jfieber@cpmlegal.com</p>
<p>Stuart R. Chandler, Esq. Chandler Law 761 E. Locust, Suite 101 Fresno, California 93720 Telephone: (559) 431-7770 Email: stuart@chandlerlaw.com</p>	

The City of Fresno and Court will not respond to any questions regarding this Notice or the Lawsuit.

PLEASE DO NOT CALL OR WRITE THE CITY OF FRESNO OR THE COURT ABOUT THIS NOTICE.

DATED: [redacted], 2021

HONORABLE ROSEMARY MCGUIRE
FRESNO COUNTY SUPERIOR COURT JUDGE

EXHIBIT 2

MUST BE
POSTMARKED
NO LATER THAN

REQUEST FOR EXCLUSION FORM

***Micheli, et al. v. City of Fresno*, Fresno County Superior Court, Case No. 16CECG02937**

TO EXCLUDE YOURSELF FROM THE CLASS ACTION LAWSUITS DESCRIBED IN THE CLASS NOTICE, YOU MUST COMPLETE, SIGN, DATE, AND RETURN THIS FORM BY U.S. MAIL POSTMARKED BY _____,

20__ TO:

Micheli, et al. v. City of Fresno
c/o CPT Group, Inc.
50 Corporate Park
Irvine, CA 92606

1. PERSONAL INFORMATION

Please provide the following information:

Your Full Legal Name:	
Your Address of the Single-Family Residence for which you reported discolored, "rusty" water to the City of Fresno anytime between January 1, 2016 to August 2, 2021 (Street Address, City, State, ZIP Code) (referred to as the "Class Property"):	
Your Telephone Number:	
Your Email Address (if any):	
Your City of Fresno Water Account Number for the Class Property Identified Above:	
If different, Your Current Residential Address (Street Address, City, State, ZIP Code):	

2. REQUEST FOR EXCLUSION FROM CLASS ACTION LAWSUITS

By signing and returning this Request for Exclusion Form to the Class Administrator, I certify that I: (1) have carefully read the Class Action Notice, (2) believe I may be a Class Member based on the description of the Class, and (3) wish to be excluded from the class action lawsuits titled *Micheli, et al. v. City of Fresno*, Fresno County Superior Court, Lead Case No. 16CECG02937 ("Lawsuits"). I understand that this request to be excluded means that I: (1) will not be a Class Member and will not be entitled to receive any portion of any settlement, award or any other relief provided to Class Members if the Plaintiffs prevail in the lawsuits; (2) will not be bound by any decisions made in the lawsuits or by the final judgment in the lawsuits; (3) will preserve my right, if any, to pursue (or not pursue) any potential or actual civil claims that I may have against the City of Fresno separately. I also understand that I will not be represented by the Plaintiffs or the law firms appointed to serve as Class Counsel in the Lawsuits.

Signed on _____, 20____, at _____,
(City) (State)

(Signature)

(Printed Name)

YOU MUST COMPLETE ALL SECTIONS OF THIS EXCLUSION FORM

EXHIBIT 3

If you own or owned residential, single-family real property within the City of Fresno's Discolored Water Investigation Area anytime between January 1, 2016 and August 2, 2021, a class action lawsuit may affect your rights.

Para una notificación en español, visite www.xxx.com

What is This Lawsuit About?

The Fresno County Superior Court approved this Notice to inform potential Class Members of a consolidated class action lawsuit. The lead class action is *Micheli, et al. v. City of Fresno*, Fresno County Superior Court Case Number 16CECG02937. The Plaintiffs in the lawsuit allege that the City of Fresno's water prematurely corroded and destroyed the galvanized iron plumbing in Northeast Fresno area residents' homes, resulting in their receipt of discolored, "rusty" water. Plaintiffs allege the City of Fresno is responsible for certain economic losses suffered under civil claims of negligence, nuisance, breach of contracts, and breach of implied warranties, including the cost of replumbing Plaintiffs' and Class Member homes, reimbursement of the cost of discolored, corrosive water, pre/post judgment interest, and attorney's fees and litigation costs. The Plaintiffs in the class action do not allege personal injury claims or seek damages for personal injury claims, nor do they seek diminution in value damages.

The City denies any liability or wrongdoing of any kind associated with any of the claims alleged by Plaintiffs in the class action lawsuit, and maintains that its practices were lawful and permissible under California and Federal laws. The City maintains that the presence of iron in water is an aesthetic issue only under the Safe Drinking Water Act; that it has not violated any numeric standards under the Safe Drinking Water Act; and that the State of California and US EPA have concluded that the City's corrosion control was optimized during all times at issue.

The class action has been heavily prosecuted and defended by the parties over the past several years. No decision has been made regarding the merits of Plaintiffs' claims, the City's liability or wrongdoing, or whether the Plaintiffs and Class Members are entitled to any money at this time. Those issues will be decided at a later time or at trial, which has been scheduled to begin July 25, 2022.

Am I a Class Member?

You may be a Class Member if you own or owned residential, single-family real property within the City of Fresno's Discolored Water investigation area (from E. Copper Avenue to E. Sierra Avenue, and from State Route 41 to N. Willow Avenue), and, anytime between January 1, 2016 and August 2, 2021: (1) had galvanized iron plumbing; (2) received water service from the City of Fresno; (3) reported discolored, "rusty" water at that address to the City of Fresno; and (4) have not released your claims against the City. To obtain more information about the class action and whether you are a Class Member, please visit www.xxx.com to review a longer form of this Notice, the complaint and answer, and other key documents and information.

What Are My Options?

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING	<p>Stay in this lawsuit. Await the outcome. Give up your rights to sue.</p> <p>If you are a Class Member and you do nothing, you keep the possibility of getting money or benefits that may come from the lawsuit. But, you give up your right to sue the City of Fresno separately about the same legal claims in this lawsuit, and you will be bound by the Court's decisions and by the final judgment, whether it is favorable or not. You will be represented by the law firms court-appointed to serve as Class Counsel representing the Class Members. However, at your option, you may also enter an appearance through your own lawyer. You may be asked to provide proof of class membership at a later time.</p>
REQUEST TO EXCLUDE YOURSELF FROM THE CLASS. BY _____, 20____.	<p>Get out of this lawsuit. Get no benefits. Keep your right to sue.</p> <p>Excluding yourself means you have decided not to participate in the lawsuit. This is the only option that allows you to individually exercise any rights you currently may have regarding the claims or potential claims against the City that are at issue in this lawsuit. For more information and to obtain a Request for Exclusion Form, go to www.xxx.com.</p> <p>The deadline to request exclusion is _____, 2021.</p>

How Can I Obtain More Information?

This notice summarizes the lawsuit. You can view the Long Form Notice, Request for Exclusion Form, and certain other court documents and case information at www.xxx.com. Please do not contact the City of Fresno or the Court about this lawsuit.

EXHIBIT 4



Class Action Administrators

www.cptgroup.com

Contact Name: Timothy N. Phillips, Jr.
Vice President Consultant, Business Development

Corporate Headquarters

50 Corporate Park, Irvine CA 92606

Tim@cptgroup.com

Main Number: (800) 542-0900

Direct Number: (818) 415-2703

August 19, 2021

Shehnaz M. Bhujwala
Boucher, LLP
21600 Oxnard Street, Suite 600
Woodland Hills, CA 91367
(818) 340-5400
bhujwala@boucher.la

Class Members: 2,500
RUM Handling: 10%
Skip Trace / Address Search: 86%
Remailed: 75%
Estimated Filing Rate: 1%
Call Center Support: 3%

Case Name: Micheli v The City of Fresno - Class Certification Mailing

Description of Mailing

Administrative Tasks:	Unit Price	Class Members/Units	Total
CASE SETUP			
System Programming / Data Base Setup	\$150.00	2	\$300.00
Project Manager	\$95.00	8	\$760.00
Call Center Support Setup/Establish/Monitor	\$150.00	1	\$150.00
Static Website	\$500.00	1	\$500.00
Spanish Translation	\$250.00	1	\$250.00
Project Manager- 1-Page Notice in English & Spanish	\$95.00	2	\$190.00
NOTIFICATION PROCEDURES			
National Change of Address (NCOA)	\$250.00	1	\$250.00
3-Page Generic Notice & Exclusion Form in English & Spanish	\$0.55	2,500	\$1,375.00
1st Class Postage (up to 1 oz.)	\$0.58	2,500	\$1,450.00
PROCESS RETURNED MAIL			
Tracking Returned Mail	\$40.00	2	\$80.00
Update Undeliverable Mail	\$0.50	250	\$125.00
Skip Traces	\$1.00	215	\$215.00
Remailed Notice Packets	\$0.55	161	\$88.55
1st Class Postage (up to 1 oz.)	\$0.58	161	\$93.38
CLASS MEMBER SUPPORT & DATA ENTRY			
Live Call Center Support	\$2.50	75	\$187.50
Clerical Staff	\$60.00	2	\$120.00
Capture and Reporting of Responses <i>(e.g. reports of opt-out's)</i>	\$2.00	25	\$50.00
Subtotal:			\$6,184.43

TERMS AND CONDITIONS

These Terms and Conditions are made a part of and incorporated by reference into the CPT Group, Inc. Terms and Conditions Agreement by and between Client and CPT Group, Inc., 50 Corporate Park, Irvine, CA 92606 ("CPT").

1. Definitions.

- a) "Affiliate" means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with, another party.
- b) "Approved Bank" means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
- c) "Case" means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
- d) "Claims Administrator" means CPT Group, Inc. a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
- e) "Client" means collectively Plaintiff Counsel and Defense Counsel.
- f) "Client Content" means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, objections, and the like which contain Client Data.
- g) "Client Data" means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
- h) "Class Member" means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
- i) "Confidential Information" means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
- j) "Court Order" means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
- k) "Defendant" means the named party and/or parties in the Case against whom action is brought.
- l) "Defense Counsel" means the attorney of record for the defendant(s) in the Case.
- m) "Intellectual Property Right" means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
- n) "Order" means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
- o) "Parties" shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
- p) "Plaintiff" means the named party and/or parties in the Case who are bringing the action.
- q) "Plaintiff Counsel" means the attorney of record for plaintiff Class Members in the Case.
- r) "Products" means any and all CPT Services, and work product resulting from Services.
- s) "Qualified Settlement Fund" means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
- t) "Service" means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
- u) "Software" means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
- v) "Settlement" means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
- w) "Settlement Agreement" means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
- x) "Term" means the term of the Agreement, as set forth in the Order.
- y) "Transmission Methods" means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
- z) "Wire Information" means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. **Client Obligations.** Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement, and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. **Security.** The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement, and shall promptly inform the other Parties of such breaches.
4. **CPT Obligations.** Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. **Mutual Obligations.**
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service. If there

is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) Incident Notification. Each party will promptly inform the other parties in the event of a breach of Client Data in their possession, and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. Qualified Settlement Fund Account. At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. Fees and Payment. Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and/or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only, and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. Term and Termination.
 - a) Term. The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
 - b) Termination for Cause. Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
 - c) Bankruptcy Events. A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
 - d) Effect of Termination. Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than two (2) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
 - e) Final Payment. If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
9. Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) Remedies. If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. Intellectual Property. As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. Indemnification. Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. Warranties. Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. Liability.
 - a) Liability Cap. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
 - b) Exclusion of Consequential Damages. NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. Communications. CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.
15. Miscellaneous Provisions.

this Agreement.

- a. Compelled Disclosure. If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by

the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.

- b. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c. Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d. Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e. Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f. Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g. No Third Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns, and shall not be construed as conferring any rights on any other persons.
- h. Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT

- a. Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and

from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.

- i. Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce, and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j. Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k. Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l. Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m. Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n. Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret or construe its meaning, scope or intent.
- o. Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power or remedy.
- p. Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

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PROOF OF SERVICE

Karen Micheli, et. al. v. The City of Fresno, et. al.
Lead Case No. 16CECG02937

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.


On November 1, 2021, I served true copies of the following document(s) described as **SECOND AMENDED [PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO APPROVE CLASS NOTICE PLAN** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure section 1010.6 and California Rule of Court 2.251, or pursuant to the Court's order authorizing electronic service, or by an agreement of the parties, I caused the document(s) to be sent from e-mail address Nelson@boucher.la to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 1, 2021, at Woodland Hills, California.



Natalie Nelson

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SERVICE LIST

Karen Micheli, et. al. v. The City of Fresno, et. al.
Lead Case No. 16CECG02937

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PROOF OF SERVICE

**Karen Micheli, et. al. v. The City of Fresno, et. al.
Lead Case No. 16CECG02937**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 21600 Oxnard Street, Suite 600, Woodland Hills, CA 91367-4903.


On November 3, 2021, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF ORDERS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Pursuant to Code of Civil Procedure section 1010.6 and California Rule of Court 2.251, or pursuant to the Court's order authorizing electronic service, or by an agreement of the parties, I caused the document(s) to be sent from e-mail address Nelson@boucher.la to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2021, at Woodland Hills, California.



Natalie Nelson

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SERVICE LIST
Karen Micheli, et. al. v. The City of Fresno, et. al.
Lead Case No. 16CECG02937

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